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SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.
JAMES ARTHUR RAY,

Defendant.

CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

**DEFENDANT JAMES ARTHUR RAY'S
MOTION *IN LIMINE* (NO. 9) TO
EXCLUDE TESTIMONY OF RICK
ROSS**

SUPERIOR COURT
COUNTY OF YAVAPAI

2011 JAN 24 PM 4:55

JEANNE HICKS, CLERK

BY: Ivy Rios

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The prosecution seeks to call as an expert witness Rick Ross—a self-proclaimed expert in
4 “destructive cults, controversial groups and movements.” Expert Witness Report of Rick Ross,
5 dated Jan. 5, 2011 (“Ross Report”) (Exhibit A). According to the State, Ross’s testimony will
6 explain to the jury why participants felt they could not leave the sweat lodge during the 2009 JRI
7 ceremony. In particular, Ross will testify that Mr. Ray used specialized “techniques” of “neuro-
8 linguistic programming” (NLP) and “large group awareness training” (LGAT) to “control”
9 participants in the 2009 JRI sweat lodge, causing them to remain inside the sweat lodge
10 “notwithstanding becoming ill.” Letter from Bill Hughes to Truc Do, Jan. 12, 2011 (Exhibit B);
11 State’s Bench Memorandum Regarding 404(b) Acts (filed 10/21/10).

12 Ross’s proposed testimony fails multiple independent hurdles of admissibility and must
13 therefore be excluded. *First*, Ross’s proposed testimony is irrelevant. Ross’s opinions on
14 supposed psychological techniques address only one question: why participants felt they could
15 not leave the sweat lodge. But that question is not in issue at this trial. Not a *single* witness will
16 say they did not feel free to leave the sweat lodge. Indeed, the evidence will show that
17 participants felt free to leave the sweat lodge at any time, were in fact free to leave, and did leave
18 when they wanted to. And many who left chose to return to finish the sweat lodge ceremony.
19 Because Ross’s testimony hinges on a counterfactual scenario, it is irrelevant and has no
20 probative value whatsoever. This basic failing is dispositive of the State’s attempt to introduce
21 Ross’s opinions.

22 *Second*, Ross’s proposed testimony is barred by Arizona Rule of Evidence 702. An expert
23 witness, even if properly qualified, may not opine on how general behavioral tendencies
24 manifested themselves in the case under review. *See State v. Montijo*, 160 Ariz. 576, 580 (App.
25 1989); *State v. Moran*, 151 Ariz. 378 (1986). And Ross, in any event, is *not* qualified to testify
26 regarding the mental state of JRI participants. By his own admission, Ross has not spoken to a
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1 single participant from the JRI sweat lodge and has never met Mr. Ray.¹ His *only* source of
2 information regarding the sweat lodge comes from media accounts and a PowerPoint presentation
3 provided by the Yavapai County Attorney.² This fact also casts doubt on whether Ross's opinion
4 could be admissible under Rule 703, which requires that opinions be based on materials that
5 experts in the field would "reasonably rel[y] upon."

6 The State cannot surmount the glaring Rule 702 deficiencies in Ross's opinions regarding
7 JRI participants by portraying Ross as an expert in the alleged psychiatric and psychological
8 phenomena of "LGAT" and "NLP" who can simply "educate the jury" in these concepts. State's
9 1/12 Letter, Exhibit B at 1. Even assuming these concepts—for which Ross could provide no
10 accepted definition—could be considered a legitimate subject of expert testimony, Ross surely is
11 not qualified to educate others in their supposedly psychological mechanisms. Ross has no
12 education or training other than a high school degree, has no specialized training in counseling or
13 mental health matters, and has never worked with the psychologists and psychiatrists that his
14 report cites.

15 *Third*, even if Ross's proposed testimony could clear all of these hurdles, it must be
16 excluded pursuant to Rule 403. The prejudice attendant to introducing a cult expert at trial is
17 plain. It is yet another attempt by the State to try this case on the basis of Mr. Ray's character,
18 rather than the merits of its evidence. And given the lack of any connection between Ross's
19 opinions and the facts in evidence, such prejudice would be profoundly unfair. Ross's testimony
20 must be excluded.

21 Moreover, the testimony—irrelevant and inflammatory speculation by an individual
22 whose worrisome agenda and troubled past far outrun his virtually non-existent qualifications—
23 would degrade the integrity of this Court and imperil Mr. Ray's right to a fair trial. As discussed
24 in further detail below, Ross also serves as a "consultant" who performs "interventions" and "cult

25
26 ¹ References to Ross's statements are based on notes taken at the Defense's interview of Ross on January
27 21, 2011. Attorneys from both sides attended and recorded the interview, but a transcript has not yet been
28 prepared.

² This is the same PowerPoint presentation given to the medical examiners which the State had refused to
disclose to the Defense under a claim of attorney work product.

1 deprogramming.” Some of his work has been violent and unlawful, resulting in criminal
2 prosecution and civil sanction.

3 **II. FACTUAL BACKGROUND**

4 According to Ross’s Expert Witness Report, he is “one of the most readily recognized
5 experts offering analysis about destructive cults, controversial groups and movements.” Ross
6 Report at 2. As he stated in his interview with Mr. Ray’s attorneys on January 21, 2011, this
7 “recognition” refers mainly to his media appearances, which fill over half of his 9-page CV. Ross
8 has no college degree and no graduate degree. He has taken no college classes on psychology,
9 medicine, group dynamics, sociology, or therapy, and has no training in any mental health field.
10 His main professional activity is serving as “Executive Director” of the “Ross Institute,” an entity
11 with no employees other than Ross and no physical offices, and with “board members” consisting
12 of two acquaintances and his brother. Ross’s “work” at the “Institute” involves archiving news
13 stories related to groups that, in his view, constitute cults or controversial groups or movements.

14 Ross also serves as a “consultant” who performs “interventions” and “cult
15 deprogramming.” Some of his work has been violent and unlawful. In 1991, for example, a
16 Washington jury found him guilty of civil rights violations for abducting an 18-year-old man and
17 conducting a 5-day, involuntary religious deprogramming. In upholding a punitive damages
18 award against Ross of \$2.5 million dollars, the district court judge noted that Ross “actively
19 participated in the plan to abduct Mr. Scott, restrain him with handcuffs and duct tape, and hold
20 him involuntarily while demeaning his religious beliefs,” and that “[a] large award of punitive
21 damages [was] also necessary” for “recidivism and mitigation” purposes, since “Mr. Ross himself
22 testified that he had acted similarly in the past and would continue to conduct ‘deprogrammings’
23 in the future.” See Order, *Scott v. Ross*, Case No. C94-0079C (W.D. Wash. Nov. 29, 1995).³

24 The State represents that Ross is an expert in “NLP,” “LGAT,” and the “‘Human
25 Potential’ Movement.” According to the State, Ross will:

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28 ³ The State has also disclosed to the Defense that in 1976, Ross was convicted of the felony of conspiracy
to commit grand theft.

- testify “about all the matters set forth in his report including Large Group Awareness Training and the ‘Human Potential’ movement,” Letter from Sheila Polk to Truc Do and Luis Li, January 7, 2011 (Exhibit C), at 1;
- testify “about how these techniques affect the behaviors of group participants and the Defendant’s use of these techniques to influence the decisions of participants to participate and remain inside the sweat lodge,” *id.*;
- testify “to educate the jury regarding Large Group Awareness Training (LGAT)”;
- 1/12/11 Letter, Exhibit B, at 1;
- testify about “the persuasive power that LGAT can hold over participants,” *id.*;
- “be asked to apply hypothetical fact scenarios (mirroring the facts in this case) to his knowledge of LGAT,” *id.*; and
- “give the opinion that defendant exerted a high level of control over the victims, and defendant’s control over the victims was such that they would remain inside the sweat lodge until the sweat lodge ceremony ended, notwithstanding becoming ill.” *Id.*

Ross himself stated in his interview that he does not consider himself an expert in neuro-linguistic programming. As to “LGAT,” Ross professes expertise but stated that he is unaware of any academically accepted definition of LGAT. Similarly, Ross stated that he is unaware of academically accepted definitions of other apparent terms of art used in his Report, such as the “Human Potential” movement, “psychonoxious,” “countertransference reactions,” and “encounter groups.” See Ross Report, Exhibit A. Ross also stated that he has never worked with any of the scholars whose work provides the “supporting documents” for the existence of a category called “LGAT” and its alleged criteria and effects. See *id.* at 2–3.

III. ARGUMENT

A. Ross’s proposed testimony must be excluded because it is irrelevant.

1. The proposed testimony is not probative of any fact in issue in this case.

“Expert testimony, of course, must meet the tests of relevancy and materiality.” 1 Ariz. Practice § 702:1 (Rev. 4th ed.). Testimony fails these basic tests when it pertains only to facts that are not at issue or when its relevance hinges on a counterfactual scenario. See, e.g., *Menendez v. Paddock Pool Const. Co.*, 172 Ariz. 258, 269 (App. 1991) (expert opinion that

1 swimming pool was intrinsically dangerous due to absence of a “deep end” and insufficient
2 signage was “immaterial” where injury occurred in the shallow end; the expert’s affidavit
3 “fail[ed] to provide any reasonable linkage between the condition alleged and the injury”). *See*
4 *also State v. Amaya-Ruiz*, 166 Ariz. 152, 167 (1990) (expert testimony regarding general political
5 situation in El Salvador was irrelevant to voluntariness of El Salvadoran defendant’s confession
6 where there was no connection between the political situation and the actual circumstances of the
7 confession). Put simply, if the expert’s opinion bears only on a question that is not in issue in the
8 case, that opinion is not relevant and not admissible.

9 This most basic rule of admissibility bars Ross’s proposed testimony. The State seeks to
10 introduce Ross’s testimony regarding the effects of “NLP” and “LGAT” solely to address the
11 question of why participants felt they were not free to leave the sweat lodge. As the Defense has
12 pointed out in a recent motion,⁴ this question presumes a counterfactual scenario. Not a *single*
13 participant states that he or she was not free to leave the sweat lodge. To the contrary, the
14 evidence will show that participants felt free to leave the sweat lodge at any time, were in fact
15 free to leave, and did leave when they wanted to.

16 Three participants in the Spiritual Warrior weekend—Elsa Hafsted, Simin Marzvan, and
17 Soheyla Marzvan—chose not to do the sweat lodge at all. Three others entered the sweat lodge
18 but decided to leave after the first round. *See* Transcript of Interview of Sylvia De La Paz by Det.
19 Willingham, 10/27/09, at 12:13-14 (stating that “there were two other people that left in the first
20 round with me: Carl and his wife Louise [Nelson]”); *id.* at 12:25 (“those of us in physical distress
21 got the hell out of there”). Many participants came and left throughout the ceremony, including
22 two participants who left *in the middle* of subsequent rounds. *See* Transcript of Interview of John
23 Ebert by Det. Parkison, 10/8/09, at 3:20-21 (Ebert left in Round 4 and went back in for Round 7);
24 Transcript of Interview of Dawn Gordon by Sgt. Boelts, 10/12/09, at 23:19-23 (John Ebert exited
25 through the side flap during Round 4); Transcript of Interview of Bill Leversee by Det. Surak,
26 10/8/09, at 9:27 (“I left in the middle of a round.”). And the State’s own witnesses will testify
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28 ⁴ *See* Defendant’s Reply in support of MIL to Exclude YouTube Videos, filed 1/10/2011, at 3.

1 consistently that they were always free to leave if they chose. *See, e.g.*, Transcript of Interview of
2 Randall Potter by Det. Surak, 10/8/09, at 10:7-8 (“You know, if anybody wanted to leave they
3 would have left.”); Transcript of Interview of Danita Oleson by Det. Parkison, 10/8/09, at 5:8
4 (“Anybody could have left at anytime.”).

5 The State plainly has not met its burden of showing that Ross’s testimony will bear on a
6 fact of consequence in this case. Indeed, given the affirmative evidence that participants *were*
7 free to leave and were *not* under Mr. Ray’s “control,” the State *cannot* meet this burden.⁵ Ross’s
8 proposed testimony is irrelevant and void of any probative value. It must be excluded.

9 **2. Hypothetical questions cannot rest on facts not in evidence.**

10 The same principles of relevance preclude testimony that the State may attempt to elicit
11 through *hypothetical* questions based on facts contrary to the evidence. The State has indicated
12 that it may seek to elicit Ross’s opinions regarding why participants were not free to leave the
13 sweat lodge through hypothetical questions. *See* State’s 1/7/11 Letter, Exhibit C, at 1
14 (“Hypothetical questions will be posed as necessary.”); State’s 1/12/11 Letter, Exhibit B, at 1
15 (“Mr. Ross . . . will be asked to apply hypothetical fact scenarios (mirroring the facts in this case)
16 to his knowledge of LGAT.”). It is well-established that hypothetical questions, like other
17 questions, must be “based on facts in evidence” and must not be a vehicle for “bootstrapping”
18 unfounded allegations. *West v. Sundance Development Co.*, 169 Ariz. 579, 584 (App. 1991). In
19 *West*, for example, an expert was not permitted to testify about the effect of alcohol on plaintiff
20 “if she had consumed more than 17 ounces of wine,” where there was no evidence she had
21 consumed that amount. *Id.* It was of no moment that “the jury did not have to believe her
22 testimony as to the amount she drank.” *Id.*

23 ⁵ Moreover, as the Court noted in its recent ruling on Defendant’s Motion to Exclude Evidence of
24 Financial Condition, a victim’s mental state is not relevant to a reckless manslaughter charge unless the
25 “*defendant is aware* that a particular mental state of another person will result in the other person being
26 placed at such a risk by the conduct of the defendant, the mental state of the other person is relevant to the
27 question of whether the defendant acted recklessly.” *See* Court’s Under Advisement Ruling Regarding on
28 Defendant’s Motion in Limine (No. 2), January 13, 2011, page 4. Here, even if the State could prove that
some participants decided not to leave the sweat lodge because of some words or actions by Mr. Ray, the
State could not prove that Mr. Ray knew that participants had such a mental state. All evidence—in
particular, of Mr. Ray instructing people that they could leave the sweat lodge, and of people in fact
coming and going throughout the ceremony—was to the contrary.

1 **B. Ross's disclosed opinions are not appropriate topics of expert testimony.**

2 Even if Ross's proposed testimony could somehow clear the insurmountable relevance
3 hurdles, his disclosed opinions are not appropriate topics of expert testimony under Rule 702.⁶
4 This is true both because the opinions Ross professes would not "assist the trier of fact" within
5 the meaning of Arizona law, and because Ross is not qualified to offer such opinions.

6 **1. Ross's testimony regarding why participants did not leave the sweat
7 lodge is not an appropriate topic for expert testimony.**

8 As an initial matter, Ross's reasoning appears to follow a track that Rule 702 forbids. In
9 Ross's view, leaders or participants of "LGATs" exhibit certain behavioral profiles, and the
10 individuals in this case therefore must have behaved in accordance with those alleged tendencies.

11 Rule 702 bars this course. An expert testifying as to general behavioral tendencies may
12 not opine on whether or why a particular victim behaved in a particular way during the incident
13 under review. *Montijo*, 160 Ariz. at 580 ("psychiatric autopsy" not admissible to "inform the trier
14 not only about decedent's character but what decedent did and why he did it on the night of his
15 death"). This type of opinion, Arizona courts have held, does not "assist the trier of fact" for
16 purposes of Rule 702. *See Moran*, 151 Ariz. at 385 ("we do not believe the jury needs an expert
17 to explain that the victim's behavior is consistent or inconsistent with the crime having
18 occurred"); *Montijo*, 160 Ariz. at 580. Such testimony does no more than advise the jury on how
19 to decide the case. *Montijo*, 160 Ariz. at 580.

20 Moreover, the State may not avoid Rule 702's prohibition by asking Ross hypothetical
21 questions.⁷ In *State v. Tucker*, the prosecution offered "hypotheticals" that asked the expert
22 "whether the specific facts of this case . . . fit into the child molesting pattern that he had
23 described." 165 Ariz. 340, 348 (App. 1990). These questions were held improper. As the court
24 explained, the so-called hypotheticals were "nothing more than the expert explaining to the jury
25

26 ⁶ Rule 702 provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact to
27 understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge,
28 skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Ariz.
R. Evid. 702.

⁷ Neither Ross nor the State has articulated exactly what "hypothetical" questions the State intends to ask.

1 how the child's testimony was, in fact, consistent with the crime having occurred"—the very
2 approach "condemned in *Moran*." *Id.* at 349.

3 **2. Ross is not qualified to offer expert opinions regarding JRI**
4 **participants' mental states.**

5 Furthermore, regardless of the reasoning he employs, Ross is plainly not qualified to offer
6 expert testimony in this case. Pursuant to Rule 702, "[t]he court must determine whether the
7 witness' expertise is *applicable to the subject about which he intends to testify*, and specifically
8 whether the witness' training and experience qualify him to render opinions which will be useful
9 to the trier of fact." *Lay v. City of Mesa*, 168 Ariz. 552, 554 (App. 1991) (emphasis added). "A
10 witness must indicate that his training and experience qualify him to render enlightened opinions
11 and draw sophisticated conclusions from the particular type of evidence available in a given
12 accident." *Englehart v. Jeep Corp.*, 122 Ariz. 256, 258 (Ariz. 1979).

13 The State seeks to elicit Ross's opinions on the mental states of JRI participants on the
14 night of October 8, 2009. Yet Ross has never met or spoken to any of the participants. Nor has
15 he met or spoken with Mr. Ray, or had *any* first-hand experience, *ever*, with a JRI seminar.⁸ Ross
16 cannot be said to have any "knowledge, skill, experience, training, or education" regarding the
17 2009 sweat lodge that would qualify him as an expert under Rule 702. These glaring deficiencies
18 flatly bar Ross's proposed testimony.⁹

19 The State cannot avoid Ross's lack of relevant experience by portraying him as an expert
20 who is qualified to "educate the jury" on the general attributes and criteria of NLP or LGAT. As
21 an initial matter, it is highly doubtful that these theories are appropriate topics for expert
22 testimony at all. Even apparently credentialed witnesses have been barred from offering related
23 testimony on the ground that the theories lack scientific acceptance. *See United States v.*

24 _____
25 ⁸ In his defense interview (but not his expert witness report), Ross stated that he once received a phone call
26 from someone who claimed she had attended JRI seminars. Ross did not recall the person's name or the
27 details of the call and thus cannot verify if the person actually ever did attend a JRI event..

28 ⁹ Furthermore, the materials Ross *has* relied on to learn about the 2009 sweat lodge—media and internet
stories and a PowerPoint presentation prepared by the prosecution—would seem to form the basis for
exclusion under Rule 703. These are not the materials "reasonably relied upon" by experts in any relevant
field of expertise.

1 *Fishman*, 743 F. Supp. 713, 720 (N.D. Cal. 1990) (excluding under *Frye v. United States* the
2 “coercive persuasion” testimony of Margaret Singer and Richard Ofshe—two psychologists
3 extensively cited in Ross’s Expert Witness Report—for lack of scientific acceptance). In any
4 event, by his own admission during his interview, Ross is *not* an expert in NLP. As for LGAT,
5 which Ross describes as a term of art among psychiatrists and psychologists but for which he
6 cannot provide an academically accepted definition, Ross lacks any of the qualifications one
7 might expect to see in an expert in psychiatry or psychology: he has no higher education, no
8 specialized training, has never worked in the mental health field, and has never worked with any
9 of the people whose studies he describes. It would strain credulity for the State to argue that Ross
10 could somehow educate the jury on these supposedly sophisticated theories—in which Ross
11 himself has no education and for which he cannot provide any more than summaries of the work
12 of others—or apply them to the facts of this case.

13 **C. To the extent any balancing is required, Ross’s proposed testimony should be**
14 **excluded under Rule 403.**

15 The irrelevance of Ross’s opinions, and their inadmissibility under Rule 702 and 703,
16 obviate the need for a 403 balancing analysis here. *See, e.g., Moran*, 151 Ariz. at 382 (a “Rule
17 403 balancing situation” does not arise where “Rule 702 precludes admission”). Any such
18 balancing, however, would clearly favor excluding the testimony as unfairly prejudicial. Ross is
19 a self-proclaimed expert in “destructive cults, controversial groups and movements.” Ross
20 Report at 1. He plans to testify regarding his theories on nefarious “mind control” and “thought
21 reform.” *Id.* at 2. He will opine, moreover, that “[t]he net results of such persuasion techniques .
22 . . can be quite destructive, rendering those involved largely unable to think independently and/or
23 critically and therefore essentially defenseless.” *Id.* at 5. Finally, Ross’s opinion is that “[t]hese
24 techniques . . . may produce ‘psychiatric causalities’” (a term Ross was unable to define in his
25 interview). *Id.* The prejudice infused in such opinions is not subtle, and it far outweighs any
26 probative value the testimony could have. *See, e.g., U.S. v. Fishman*, 743 F.Supp. 713, 722 (N.D.
27 Cal. 1990) (sociology professor Ofshe’s testimony on the “thought reform” practices of the
28

1 Church of Scientology "has a probative value which is substantially outweighed by its danger of
2 unfair prejudice").

3 **D. The State may not use Ross's testimony to introduce otherwise inadmissible**
4 **evidence**

5 In earlier motions and correspondence, the State indicated its intent to provide Ross with
6 "video and other documentation" regarding other "several JRI events." State's Bench
7 Memorandum Regarding 404(b) Acts at 2. The State suggested that it would then seek to
8 introduce such materials into evidence. *See id.* Ross's Expert Witness Report mentions no such
9 materials, however, and in his interview he stated that he had been provided no materials other
10 than the State's PowerPoint presentation. The Defense therefore assumes the State no longer
11 intends to provide Ross with such materials or introduce them into evidence. The Defense
12 reserves, however, its right to object to any opinions based on such materials and the introduction
13 of any such materials into evidence. *See generally* Ariz. R. Evid. 703.


14 **IV. CONCLUSION**

15 The testimony the State seeks to elicit at trial from Rick Ross is inadmissible for multiple
16 independent reasons. Furthermore, Ross's opinions are so dubious, and their connection to this
17 case so remote, that their introduction at this trial would imperil its fundamental fairness. The
18 testimony should be excluded.

19
20 DATED: January 24th, 2011

MUNGER, TOLLES & OLSON LLP
BRAD D. BRIAN
LUIS LI
TRUC T. DO
MIRIAM L. SEIFTER

23 THOMAS K. KELLY

24
25 By 
26 Attorneys for Defendant James Arthur Ray

27 Copy of the foregoing delivered this 24th day
28 of January, 2011, to:

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Sheila Polk
Yavapai County Attorney
Prescott, Arizona 86301

by M. Dinco

Expert Witness Report

By Rick Ross

Re: State of Arizona v. James Arthur Ray

January 5, 2011

Introduction

I am the founder and Executive Director of the Ross Institute of New Jersey a nonprofit, tax-exempt 501(c)-(3) organization devoted to public education and research regarding destructive cults, controversial groups and movements.

Since 1982 I have studied, researched and responded to problems posed by such groups.

My work has included expert testimony in court cases.

Expert Testimony

I have been qualified and accepted as an expert witness through a "Daubert hearing" in United States District Court.

I have been qualified and accepted as an expert witness in ten states including Alabama, Arizona, California, Georgia, Kansas, Kentucky, North Dakota, Ohio Pennsylvania and Wisconsin. I have additionally been deposed concerning court cases in Arkansas, Connecticut, South Carolina and Texas.

I have testified as an expert witness in Arizona including Yavapai, Coconino, Maricopa and Cochise counties

My fees for expert witness work are \$75.00 per hour for travel time, \$150.00 per hour for consultation and preparation time and \$200.00 an hour for time spent at court

My work as an expert witness has included the following cases:

- Jacque Pepper vs. Steven Pepper; a divorce and child custody case in Maricopa County Superior Court Arizona (2001)
- Miller v. Miller a child custody case, Ashtabula County Juvenile Court, Ohio (2007)
- Sokol v. Sokol a child custody case, Kansas City, Kansas (2008)
- Lynn Noyes v. Kelly Services United States District Court, E.D. California (2008)
- Sotto v. Sotto, a child custody case in Cochise County Superior Court, Arizona (2009)

Additional Background

My work has also included working with law enforcement both local and at the federal level (e.g. Bureau of Alcohol Tobacco and Firearms BATF).

I have lectured at universities and colleges such as Dickinson College, the University of Chicago, Carnegie Mellon University, Baylor University, and the University of Pennsylvania in Philadelphia.

My professional analysis for the media has included work for CBS News, CBC, Fox News and Nippon of Japan.

Written/Published Work

My written/published work includes:

- "Cult Deprogramming: An Examination of the Intervention Process" published by the Institute of Religious Studies Shanghai Academy of Social Sciences 2010
- "Is Falun Gong a Cult?" published by the Beijing Academy of Social Sciences 2009
- "In the Name of Love: Abusive Controlling Relationships" 2004 (Educational DVD)
- "Cults: An Educational Volume" 2001 (Video, audiocassettes and handbook)
- "The Emergence of New Hybrid/Composite Groups and Counseling Approaches: A Study of Friends Landing" 1999 published by the Ross Institute of New Jersey
- "Has Madonna Joined a Cult?" 1997 Published at *CultNews.com*

I am one of the most readily recognized experts offering analysis about destructive cults, controversial groups and movements.

My CV is attached

Large Group Awareness Training and the "Human Potential" movement

I have been gathering information about large group awareness training (LGAT) and the "human potential" movement since the early 1980s.

My work studying such groups has included archiving news reports, articles and research material at the Ross Institute database and additionally receiving and handling repeated complaints from families, former participants and others concerned.

Some of the LGATs included at the Ross Institute Internet archives are Est. Landmark Education, Mankind Project, Sterling Institute of Relationship, Lifespring, Asiaworks and NXIVM and personal transformation retreats led by James Arthur Ray.

It is not uncommon for LGATs to generate serious complaints and in some situations personal injuries.

The deliberate planned process facilitated by LGAT leaders often precludes and/or greatly inhibits meaningful critical analysis by participants regarding their safety. This can be seen by the exclusion of practical considerations in deference to the goals of the training as defined by the leader.

The type of persuasion frequently employed within the context of LGATs is most often based upon authoritarian control, rather than independent thinking. The LGAT process has been compared to "coercive persuasion" or "thought reform."

The subsequent and related controversy regarding such training has been well documented through press reports.

I have discussed the negative effects of such training techniques with LGAT participants, affected families and others concerned.

Supporting Documents

The following research supports my conclusions regarding LGATs often generally associated with what is referred to as the "human potential" movement:

- "The Politics of Transformation: Recruitment – Indoctrination Processes in Mass Marathon Psychology Organizations" St. Martin's Press 1993

- "Coercive Persuasion and Attitude Change" Encyclopedia of Sociology Volume 1, Macmillan Publishing Company, New York by Richard J. Ofshe, PhD
- "Thought Reform and the Psychology of Totalism" the University of North Carolina Press Chapel Hill and London by Robert Jay Lifton, M.D.
- "Cults in Our Midst" Jossey-Bass Publishers, San Francisco by Margaret Singer, PhD
- "Characteristics of participants in the Forum, psychotherapy clients, and control participants: A comparative study" The British Psychological Society 2005
- "Psychiatric Disturbances Associated with Erhard Seminars Training: I A Report of Cases" *American Journal of Psychiatry* March 1977 by Leonard L. Glass, M.D., Michael A. Kirsch, M.D. and Frederick N. Paris, M.D.
- "Cult of Personality" *Forbes Magazine* October 13, 2003 Michael Freedman
- "An Espian's Brief Life" *The Albany Times-Union* February 1, 2004
- "Robert Jay Lifton's eight criteria of thought reform as applied to Executive Success Programs by Paul Martin, PhD the Ross Institute of New Jersey 2003
- "A Critical Analysis of the Executive Success Programs Inc. by Paul Martin, PhD the Ross Institute of New Jersey 2003
- "Thought Reform Programs and the Production of Psychiatric Causalities" *Psychiatric Annals* 20:4, April 1990 by Margaret Singer, PhD, and Richard Ofshe, PhD

Conclusions

13 liabilities have been identified within encounter groups, some that are quite similar to the characteristics of most LGATs:

1. They lack adequate participant-selection criteria.
2. They lack reliable norms, supervision, and adequate training for leaders.
3. They lack clearly defined responsibility.
4. They sometimes foster pseudo authenticity and pseudo reality.
5. They sometimes foster inappropriate patterns of relationships.
6. They sometimes ignore the necessity and utility of ego defenses.
7. They sometimes teach the covert value of total exposure instead of valuing personal differences.
8. They sometimes foster impulsive personality styles and behavioral strategies.
9. They sometimes devalue critical thinking in favor of "experiencing" without self-analysis or reflection.
10. They sometimes ignore stated goals, misrepresent their actual techniques, and obfuscate their real agenda.
11. They sometimes focus too much on structural self-awareness techniques and misplace the goal of democratic education; as a result participants may learn more about themselves and less about group process.
12. They pay inadequate attention to decisions regarding time limitations. This may lead to increased pressure on some participants to unconsciously "fabricate" a cure.

13. They fail to adequately consider the "psychonoxious" or deleterious effects of group participation (or) adverse countertransference reactions.

The key factors that distinguish coercive persuasion from other forms of persuasion and typify the techniques frequently employed by most LGATs are:

1. The reliance on intense interpersonal and psychological attack to destabilize an individual's sense of self to promote compliance
2. The use of an organized peer group
3. Applying interpersonal pressure to promote conformity
4. The manipulation of the totality of the person's social environment to stabilize behavior once modified

Psychiatrist Robert Lifton also detailed the social control characteristics of organizations that operate what he called "thought reform" programs. Lifton identified eight themes or properties of reform environments that contribute to their manipulative and totalistic quality:

1. Control of communication
2. Emotional and behavioral manipulation
3. Demands for absolute conformity to behavior prescriptions derived from the ideology
4. Obsessive demands for confession
5. Agreement that the ideology is faultless
6. Manipulation of language in which clichés substitute for analytic thought
7. Reinterpretation of human experience and emotion in terms of doctrine
8. Classification of those not sharing the ideology as inferior and not worthy of respect

Again, these characteristics are evident within most LGATs.

Final Conclusion

LGATs can be determined to be dangerous when.

1. Leaders had rigid, unbending beliefs about what participants should experience and believe, how they should behave in the group. And when they should change.
2. Leaders had no sense of differential diagnosis and assessment skills, valued cathartic emotional breakthroughs as the ultimate therapeutic experience, and sadistically pressed to create or force a breakthrough in every participant.
3. Leaders had an evangelical system of belief that was the one single pathway to salvation.
4. Leaders were true believers and sealed their doctrine off from discomforting data or disquieting results and tended to discount a poor result by, "blaming the victim."

Margaret Singer determined that a thought reform programs include six primary conditions:

1. Obtaining substantial control over an individual's time and thought content, typically by gaining control over major elements of the person's social and physical environment.
2. Systematically creating a sense of powerlessness in the person.
3. Manipulating a system of rewards, punishment and experiences in such a way as to promote new learning of an ideology or belief system advocated by management.
4. Manipulating a system of rewards, punishments, and experiences in such a way as to inhibit observable behavior that reflects the values and routines of life organization the individual displayed prior to contact with the group.
5. Maintaining a closed system of logic and an authoritarian structure in the organization.
6. Maintaining a non-informed state existing in the subject.

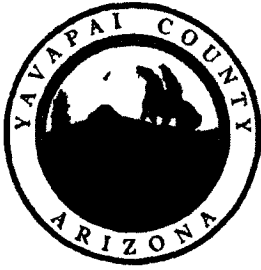
The net results of such persuasion techniques employed within a group can be quite destructive, rendering those involved largely unable to think independently and/or critically and therefore essentially defenseless.

These techniques, which are used to induce belief, change, and engender dependency through various thought reform programs such as those evident within LGATs may produce "psychiatric casualties."

Ofshe and Singer specifically conclude that LGATs "appear more likely to induce mood and affect disorders " And this appears to be related to the behavior modeled in the group and to attitudes advocated by the group.

Miscellaneous reactions reportedly include anxiety combined with cognitive inefficiencies, such as difficulty in concentration, inability to focus and maintain attention, and impaired memory (especially short-term); self-mutilation; phobias; suicide and homicide; and psychological factors affecting physical conditions (described in section 316.00 of the DSM-III-R) such as strokes, myocardial infarctions, unexpected deaths, recurrence of peptic ulcers, asthma, etc.

Rick Ross



Yavapai County Attorney

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Facsimile (928) 771-3110

SHEILA POLK
Yavapai County Attorney

January 12, 2011

Sent via email and First Class mail

Truc T. Do
Munger, Tolles & Olson L.L.P.
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

Re: State v. Ray, opinions by Rick Ross & Steve Pace

Dear Ms. Do:

We received your 9 January 2011 letter requesting further information about the opinions that will be expressed by Rick Ross and Steve Pace. The State primarily intends to call each witness to educate the jury about the areas of their respective specialized knowledge that relate to this case. To that end, each expert's report summarizes the specialized knowledge relevant to this case which we will ask the experts to educate the jury about.

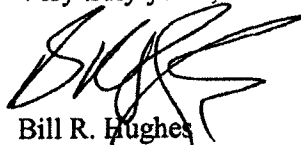
We do not intend to ask Mr. Pace to give an opinion requiring him to apply any particular facts of this case. Mr. Pace will be called as a "cold expert." Accordingly, we do not intend to ask Mr. Pace to give an opinion as to the adequacy (or lack thereof) of defendant's safety precautions in this case. Rather, Mr. Pace will provide the jury with the specialized knowledge that a reasonable adventure program leader would know as to the reasonable safety precautions and considerations that a leader of any large sized adventure program should plan for, consider, and implement.

Mr. Ross will be asked not only to educate the jury regarding Large Group Awareness Training (LGAT) and will explain to the jury the persuasive power that LGAT can hold over participants, but will be asked to apply hypothetical fact scenarios (mirroring the facts in this case) to his knowledge of LGAT. In those hypothetical questions, Mr. Ross is expected to give the opinion that defendant exerted a high level of control over the victims, and defendant's control over the victims was such that they would remain inside the sweat lodge until the sweat lodge ceremony ended, notwithstanding becoming ill.

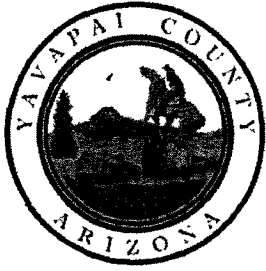
On another note, now that we have finally received Dr. Paul's CV and report, we would like to interview Dr. Paul as soon as possible. My assistant, Penny Cramer, will be in touch with you to provide my availability.

If you have any questions or need anything, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bill R. Hughes', written over the printed name.

Bill R. Hughes
Deputy Yavapai County Attorney



Yavapai County Attorney

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SHEILA POLK
Yavapai County Attorney

January 7, 2011

Luis Li
Truc T. Do
Munger, Tolles & Olson L.L.P.
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

Re: State v. Ray, Disclosure of Expert Witness Reports

Dear Ms. Do and Mr. Li:

Attached is the State's 26th Supplemental Disclosure Statement disclosing the reports of expert witnesses, Rick Ross and Steven Pace. In addition to the reports of these witnesses, the State provides the following information relating to the expected scope of their testimony and the records they reviewed related to this case.

Rick Ross

Report: "Expert Witness Report," dated January 5, 2011, Bates No. 6695-6699

Materials reviewed: The State provided Mr. Ross with a copy of the PowerPoint presentation disclosed to you at Bates No. 4894-4953. Any additional materials reviewed will be determined during his interview.

Scope of Testimony: Mr. Ross will testify about all the matters set forth in his report including Large Group Awareness Training and the "Human Potential" movement. Mr. Ross will also testify about how these techniques affect the behaviors of group participants and the Defendant's use of these techniques to influence the decisions of participants to participate and remain inside the sweat lodge. Hypothetical questions will be posed as necessary.

Steven Pace

Reports: Included in the attached disclosure are the following reports/papers produced by Steven Pace:

1. "Considerations Used to Assess Program Safety," Bates No. 6700-6704
2. "The Use of Subjective versus Objective Risk in Adventure Education," Bates No. 6705-6709
3. Draft dated 12/7/10 of "Considerations Used to Assess Program Safety," Bates No. 6710-6713

Materials reviewed: The State provided Mr. Pace with a copy of the PowerPoint presentation disclosed to you at Bates No. 4894-4953. Any additional materials reviewed will be determined during his interview.

Scope of Testimony: The State intends to call Mr. Pace as a "cold expert." As such, his reports address the considerations used to assess program safety for any adventure program. During trial, the State will question Mr. Pace regarding all the matters contained in his reports and publications; the appropriate considerations that would be used to assess the program safety for the types of events at Spiritual Warrior, including the sweat lodge ceremony; and what safety measures should have been implemented for these types of activities. Hypothetical questions will be posed as necessary.

Douglas Sundling

Reports: Mr. Sundling was not asked to prepare a new report for trial and has not been formally retained as a witness. The State may call Mr. Sundling as a rebuttal witness, and reserves the right to call him in its case-in-chief. Accordingly, the State is providing information relating to his anticipated testimony. The State has previously disclosed the following reports/websites prepared by Mr. Sundling:

1. "The Sweatlodge an Interpretation," Bates No. 5687-5704
2. "Death and a Bogus Sweatlodge," Bates No. 6683-6693
3. Douglas Sundling's website as found at <http://bogus-sweatlodge.com/index.html>, disclosed in the State's 25th Supplemental Disclosure

Materials Reviewed: Mr. Sundling received the following records through Public Records Requests:

1. Search Warrants, Affidavits and Returns w/photos taken during the execution of the warrants.
2. 911 calls and radio traffic recordings
3. YCSO DR 09-040205 and Supplements 1-150
4. Indictment & Arrest Warrant
5. Redacted Autopsy Reports

Scope of Testimony: Mr. Sundling will testify about matters contained in his publications; how a sweat lodge ceremony is typically conducted; and will contrast this information with the methods used to conduct the sweat lodge ceremonies at the Defendant's Spiritual Warrior seminars. Hypothetical questions will be posed as necessary.

Dr. Matthew Dickson

Report: The State has not received the report of Dr. Dickson. We anticipate it will be received in the near future and will be disclosed immediately.

Materials Reviewed: The State provided Dr. Dickson with the following records:

1. Autopsy Reports and Notes for Kirby Brown, James Shore and Liz Neuman
2. Medical Records for Kirby Brown, James Shore and Liz Neuman
3. Medical Records for the surviving participants: Andresano, Andretti, Bivins, Brinkley, Caci, Grain R., Grimes, Mehrava, Phillips, Rainey, Ray S., Ronan, Spencer, Veguilla and Wong
4. Selected Supplements from DR 09-040205 as follows:
 - a. 2009 Spiritual Warrior: Initial DR, Supplements 1, 2, 3, 4, 9, 10, 11, 13, 14, 19, 24, 26, 28, 34, 45, 46
 - b. 2008 Spiritual Warrior: Supplements 84, 99, 119, 121, 139, 162
 - c. 2007 Spiritual Warrior: 73, 132, 133
 - d. 2005 Spiritual Warrior: 29, 44, 87, 101, 113, 114, 152
5. Dr. O'Connor's Reports on Sidney Spencer and Dennis Mehrava
6. Daniel Pfankuch's medical records from 2005
7. The YCSO PowerPoint presentation

Scope of Testimony: Although the State has not yet received Dr. Dickson's report, the State anticipates Dr. Dickson will provide his opinion about the cause of death of the victims; all matters set forth in his report; death caused by heat; and the cause, symptoms and treatment of heat-related illnesses. Hypothetical questions will be posed as necessary.

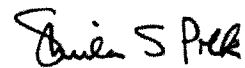
Interview Requests

Please provide Penny Cramer, my assistant, with multiple dates in January of your availability for the interviews of the listed experts and indicate whether you want to conduct the interviews telephonically or in person.

Luis Li & Truc Do
January 7, 2011
Page Four

If you have any questions or need anything further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sheila S Polk". The signature is written in a cursive, flowing style.

Sheila Sullivan Polk
Yavapai County Attorney